

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0566 CG**  
**Denial of Charity Gaming Qualification Application**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Charity Gaming - Qualified Organization**

**Authority:** IC 4-32-6-20(1)(C); IC 4-32-9-1; IC 4-32-9-4; IC 6-8.1-5-1; 45 IAC 18-1-7; Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind. App. 5 Dist. 1993).

The taxpayer protests the Department's denial of its qualification application.

**STATEMENT OF FACTS**

The Petitioner filed Form CG-2 with the Charity Gaming Section of the Indiana Department of Revenue on June 15, 1998 (Department's Exhibit #2). The Department returned the Petitioner's application with a letter of explanation dated July 7, 1998 (Department's Exhibit #1). The Department's letter stated that the Petitioner was not in good standing with the Department, because the appropriate tax returns had not been filed for the past five years. The Petitioner was also not registered as a not-for-profit organization, and there was insufficient documentation to support the Petitioner's contention that they had been in continuous existence for more than five years. It appears from the myriad of documents submitted during the hearing, that the Petitioner had completed Form IT-35AR (Not-For-Profit Organization's Annual Gross Income Tax Exemption Report) for the years 1993 through 1997. The returns were signed and dated on July 15, 1998, and were stamped received by the Not-for-Profit section of the Indiana Department of Revenue on July 23, 1998 (Petitioner's Exhibits F through J). At hearing, the Petitioner also provided an original IT-35A (Application to File as a Not-For-Profit Organization) signed and dated on July 15, 1998 but was not stamped as received by the Indiana Department of Revenue (Petitioner's Exhibit M). The Petitioner also completed Form CG-1 (Indiana Charity Gaming Qualification Application). The Petitioner's Form CG-1 was signed and dated on August 11, 1998 (Department's Exhibit #3). The Department's denial of the Petitioner's Indiana Charity

Gaming Qualification Application was dated September 21, 1998 (Department's Exhibit #4). The Petitioner protested the Department's decision on September 24, 1998. The Department's second denial was based upon four alleged deficiencies. First, the Petitioner did have not-for-profit status. Second, The organization had not filed tax returns and was thus not in good standing with the Department. Third, the Petitioner had not been in continuous existence for a period of five years. Finally, the Petitioner's application contained a material misrepresentation regarding where the bingo games were to occur. An Administrative hearing was held on Thursday, November 5, 1998. A transcript was completed and delivered to the Department on Friday, November 6, 1998.

## **I. Charity Gaming - Qualified Organization**

### **DISCUSSION**

There are four violations in controversy in this case, any one of which if found true would be sufficient for upholding the Department's denial. Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claims are valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

Only a qualified not-for-profit organization can conduct charity gaming in Indiana pursuant to IC 4-32-9-1. Indiana Code section 4-32-6-20 and regulation 45 IAC 18-1-7 define a qualified organization. Indiana Code section 4-32-6-20 provides in pertinent part:

(a) "Qualified organization" means:

- (1) a bona fide religious, educational, senior citizen, veteran, or civic organization operating in Indiana that:
  - (A) operates without profit to the organization's members;
  - (B) is exempt from taxation under Section 501 of the Internal Revenue Code; ...

According to IC 4-32-9-4 each qualified organization applying for a charity game license must submit to the Department a written application. The application must include the information that the Department requires and sufficient facts relating to the organization or the organization's incorporation or founding to enable the department to determine whether the organization is a qualified organization. IC 4-32-9-4(b)(6).

Pursuant to 45 IAC 18-1-7(4) a qualified organization must be currently registered with the Department as a not-for-profit organization.

The Petitioner filed its Indiana Charity Gaming Qualification Application (Department's Exhibit #3) which contains a certificate of existence from the office of the Indiana Secretary of State acknowledging the Petitioner's existence as a nonprofit corporation duly organized and existing under and by virtue of the laws of the State of Indiana. The certificate is dated June 15, 1998.

The certificate also states that the Petitioner filed its Articles of Incorporation on June 10, 1998. According to the Petitioner, it submitted Form IT-35A, Application to File as a Not-for-Profit Organization on July 15, 1998 (Petitioner's Exhibit M). The Petitioner also contends that it filed Form IT-35AR, Not-for-Profit Organization's Annual Gross Income Tax Exemption Report for the years 1993 through 1997 (Petitioner's Exhibits F through J). The IT-35ARs were dated July 15, 1998; however, the returns are all stamped July 23, 1998 by the Not-for-Profit section of the Indiana Department of Revenue.

It is clear from the record that the Form CG-2 was filed with the Department on June 15, 1998. The Department reviewed the Petitioner's application and determined correctly that the Petitioner was not properly registered as a not-for-profit entity with the Department. The Department's denial letter dated July 7, 1998 was issued before the Petitioner filed the proper not-for-profit forms with the Department as is required of an organization under 45 IAC 18-1-7(4). The Petitioner also included in its Form CG-2 three letters from the Internal Revenue Service to the Petitioner's parent organization, but failed to include a letter from the parent organization stating that they recognize the Petitioner as a legitimate subordinate in good standing (required pursuant to IRS group ruling).

The Department also in its July 7, 1998, letter correctly stated that the information submitted by the Petitioner was not sufficient to make a determination as to whether the Petitioner was in existence of at least five (5) years as is required by IC 4-32-6-20(a)(1)(C).

The Petitioner evidently did not appeal this denial but apparently submitted Form CG-1, Indiana Charity Gaming Qualification Application (Department's Exhibit #3) on August 11, 1998. The Department reviewed the application and sent a letter of denial to the Petitioner on September 21, 1998. The Department's second denial was based upon four alleged deficiencies, which will be addressed in full. First, the Petitioner did have not-for-profit status. The Department made the determination that as of September 21, 1998, the Petitioner's did not have not-for-profit status. During the hearing, there was conflicting testimony as to whether the appropriate not-for-profit tax returns were filed with the Department. During the hearing the Petitioner submitted as evidence original IT-35ARs (Petitioner's Exhibits F through J) file stamped by the Department's not-for-profit section. The Petitioner states that the returns were filed and the Department's witness states the returns could not be processed and were returned to the Petitioner. The Petitioner also submitted an IT-35A which was not stamped as received by the Department. A quick review of the Departmental records reveals that the Petitioner did submit the returns to the Department as was stated by the Petitioner. However, the returns could not be processed because the Petitioner was not registered as a not-for-profit. The Form IT-35A must be completed and processed in which case the organization is entered into the system given a registration number, and then the returns then can be processed. Petitioner's Exhibit M (IT-35A) is the original and does not contain a stamp showing that it has or had been received by the Department. Therefore, the Department was correct in determining that the Petitioner was not properly registered.

Second, The organization had not filed tax returns and was thus not in good standing with the Department. As was stated previously, without Form IT-35A being properly filed, and the issuance of a not-for-profit registration number tax returns cannot be processed by the Department.

Third, the Petitioner had not been in continuous existence for a period of five years. The Department must determine whether or not the Petitioner or its parent organization has been in continuous existence for at least five years. According to page three of the Department's form CG-1, the relevant facts in determining continuous existence could include a combination of the following items:

- Indiana Forms IT-35 AR and IT-20NP;
- Federal Form 990 and/or 990T if applicable;
- minutes of meetings;
- bank statements;
- dated newspaper articles;
- any type of dated state or local licensing permits, such as alcoholic beverage licenses and registration with the Secretary of State's office;
- account payables, including copies of dated invoices;
- account receivables, including copies of dated invoices;
- utility bills;
- dated leases;
- canceled checks (representing each of the five years);
- bylaws that are dated;
- dated articles of incorporation;
- affidavits or letters of confirmation from the national or parent organization on organization letterhead; and
- descriptions and results of fund-raising activities for the last five years.

A qualified organization as defined in IC 4-32-6-20 means an organization that has been continually in existence for at least five (5) years or is affiliated with a parent organization that has been in existence for at least five (5) years. It is apparent from the record that the Petitioner is affiliated with a parent organization and that organization has been in existence for clearly more than five (5) years.

Finally, the Petitioner's application contained a material misrepresentation regarding where the bingo games were to occur. The Petitioner's Form CG-2 (Department's Exhibit #2) stated that the address of the facility where the bingo event will be conducted was 502 E. Beech Street, Sullivan, Indiana 47882. The actual address of the building to be used by the Petitioner was 310 Stewart Street, Sullivan, Indiana 47882. The Petitioner contends that the use of an incorrect address was simply an oversight. Regardless of the motive behind using an improper address on the application the fact remains that the address was incorrect. Therefore, the Form CG-2 was incorrect and incomplete. Pursuant to IC 4-32-9-4(4) a written application must contain the

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location at which the organization will conduct the bingo event. The Petitioner failed to comply with this law. The Department's denial of the Petitioner's application was correct.

### **FINDING**

Upon reviewing the evidence provided by the Department and the Petitioner's objections it is clear that the Department was correct in denying the Petitioner. The taxpayer's protest is hereby denied.